No. 6014

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

H. P. BROWN,

Appellant,

vs.

W. J. FITZGERALD, Sheriff of the City and County of San Francisco, State of California, and W. A. HAMM, Sheriff of the County of Grays Harbor, State of Washington,

Appellees.

BRIEF FOR APPELLEES.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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STATEMENT OF THE CASE.

Petitioner, H. P. Brown, was duly indicted by the Grand Jury of Grays Harbor County, Washington, and charged with the violation of Section 3263, Remington's Compiled Statutes (the Washington Bank Act), being Section 56 of Chapter 80, Laws of 1917 of the State of Washington (Transcript of Record pp. 6-15), in that he knowingly subscribed to and exhibited a false or fictitious paper or instrument with intent to deceive a person authorized to examine into the affairs of any bank or trust company.

A warrant of arrest was issued based upon the indictment and upon an executive warrant signed by

the Governor of the State of California In the Matter of the Extradition of H. P. Brown, which executive warrant commanded the arrest, imprisonment and detention of prisoner, and the transportation and removal of prisoner from the State of California to the State of Washington under and pursuant to the provisions of Section 5278 of the Revised Statutes of the United States of America. (Transcript of Record p. 3.) (U. S. C. A., Title 18, Section 662, and United States Constitution, Article IV, Section 2, Clause 2.)

Under this executive warrant of arrest, petitioner was arrested and imprisoned by appellees, and held for removal to the State of Washington. (Transcript of Record p. 3.) Subsequently, having theretofore without success petitioned to the several State Courts of California, petitioner filed his petition in the District Court seeking his release upon a writ of habeas corpus, basing his right to release upon five separate grounds (Transcript of Record pp. 4-5), which petition was denied (Transcript of Record p. 21), and the petitioner remanded to the custody of appellee W. J. Fitzgerald, Sheriff of the City and County of San Francisco (Transcript of Record pp. 26-7), and petitioner appealed.

In this appeal appellant raises no question as to the validity of the indictment, the executive warrant for his arrest under which he is held, or the proceedings leading thereto, nor does he deny that he is a fugitive from justice within the definition of the statute. The sole ground of his appeal is, as stated by appellant on page 3 of his brief, that he has not

been charged in the State of Washington with "treason, felony, or other crime." Appellees' brief, therefore, will be confined to a reply to this contention.

ARGUMENT.

I. THE INDICTMENT UPON WHICH THE GOVERNOR'S WARRANT OF ARREST WAS ISSUED IS IN THE LANGUAGE OF THE STATUTE OF WASHINGTON AND IS THEREFORE SUFFICIENT TO SUBSTANTIALLY CHARGE PETITIONER WITH THE COMMISSION OF A FELONY IN THE STATE OF WASHINGTON. UNDER THESE CIRCUMSTANCES, THE CHARGE OF CRIME IS SUFFICIENT FOR RENDITION PURPOSES.

The statute under which appellant was indicted (Section 3263, Rem. Comp. Stat. of Washington; Sec. 56, Chap. 80, Laws of the State of Washington, 1917), omitting such parts as are not relevant in the present proceeding, reads as follows:

> "Every person who shall * * * knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper with the intent to deceive any person authorized to examine into the affairs of any bank or trust company * * * shall be guilty of a felony."

Clearly, under that section, the elements necessary to present a violation are

> (1) Knowingly subscribing to or exhibiting any false or fictitious paper.
>
> (2) With intent to deceive any person authorized to examine into the affairs of any bank or trust company.

The indictment contains five counts, and, *in the language of the statute* charges that the petitioner on January 10 and 15, 1927, made, subscribed to and exhibited certain false financial statements relative

to his own financial condition and that of four separate corporations of which he was president, that he delivered said false statements to Hayes & Hayes, Inc., bankers, a banking corporation duly organized and existing pursuant to the laws of the State of Washington, and that the same was knowingly done with the intent to deceive a person or persons authorized to examine into the affairs of said bank. The language of each count of the indictment is the same, except that in each count a different offense is charged. For the convenience of the Court, Count I is herein set forth in full and reads as follows:

> "H. P. Brown is accused by the grand jury of Grays Harbor County, duly impaneled and sworn, by this indictment, of the crime of knowingly subscribing to or exhibiting a false and fictitious paper or instrument with the intent to deceive a person authorized to examine into the affairs of a banking organization existing under and by virtue of the laws of the State of Washington, committed as follows, to-wit:
>
> That the said H. P. Brown, then and there being in the county of Grays Harbor, State of Washington, did, on or about the 10th day of January, 1927, and within three years from the date of presentment of this indictment, willfully, knowingly, maliciously, fraudulently, feloniously and unlawfully make, subscribe, exhibit to and file with Hayes & Hayes, Inc., bankers, a banking corporation duly organized and existing pursuant to the laws of the State of Washington as a state bank, authorized to transact the business of banking in said state, a certain paper, instrument or financial statement, which said instrument was signed and subscribed to by the said H. P. Brown, and which said paper, instrument or financial statement purported to set forth a full, true and correct financial statement of the assets and lia-

bilities of the said H. P. Brown as of date December 31, 1926, but that said paper, instrument or financial statement was false the fictitious in that the said H. P. Brown set forth therein that he, the said H. P. Brown, was the owner of stocks and bonds to the value of $1,005,118.52, and that in truth and in fact, said stocks and bonds were of no value whatever over and above the sum of $105,000.00, which fact was then and there well known to the said H. P. Brown, and that said paper, instrument or financial statement was so made, subscribed to and exhibited to the said banking corporation as aforesaid by the said defendant, H. P. Brown, with the intent to deceive the examiner or examiners or other person or persons who were authorized by law to examine into the affairs of said banking corporation, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Washington." (Transcript of Record pp. 6-8.)

The law is well settled that where a crime is charged in the language of the statute it is sufficient.

United States v. Carll, 105 U. S. 611, 26 L. ed. 1135;

Kubo v. United States, 31 Fed. (2d) 88.

This familiar rule has been frequently reiterated by the Courts of the State of Washington, and is stated in 2 *Washington Digest* (Rem. 1919), p. 228, as follows:

> "It is a general rule that it is sufficient that the information or indictment charges the offense substantially in the language of the statute."

Washington cases enunciating the rule are:

Schilling v. Territory, 2 Wash. T. 283, 5 Pac. 926;

State v. Reis, 9 Wash. 329, 37 Pac. 452;

State v. Phelps, 122 Wash. 181, 60 Pac. 134;
State v. Randall, 182 Pac. 575, 576;
State v. Gunns, 240 Pac. 674, 675;
State v. Wilson, 9 Wash. 16, 36 Pac. 967;
State v. Turner, 10 Wash. 94, 38 Pac. 864, 865;
State v. Ryan, 34 Wash. 597, 76 Pac. 90, 92;
State v. Vanderveer, 196 Pac. 650, 1;
State v. Smith, 40 Wash. 615, 82 Pac. 918.

Section 2064, Rem. Comp. Stat. provides:

> "Words in a statute to define a crime need not be strictly pursued in the indictment or information but other words conveying the same meaning may be used."

The charge against petitioner thus meeting the requirements of fundamental law, which the legislature and Courts of the demanding State have declared to be sufficient for the purposes of indictment, must be held a sufficient "charge of crime" for rendition purposes, even though such description may fall short of the details required by the State statutes for complaints or for other purposes.

In *Collins v. Traeger,* 27 Fed. (2d) 842 (9th Cir. 1928), this rule was tersely stated at p. 846 as follows:

> "However that may be, a charge (assuming that it meets the requirements of fundamental law) which the Legislature and the courts of the demanding state have declared to be sufficient for the purpose of indictment should be held a sufficient 'charge of the crime' for rendition purposes, even though such description may fall short of the details required by the state statutes for complaints or for other purposes. The reported cases upon the general subject are not in

complete harmony, but our conclusion is thought to be a fair deduction from the decisions of the United States Supreme Court. It will suffice to cite two: Pierce v. Creecy, 210 U. S. 387, 28 S. Ct. 714, 52 L. ed. 1113, and Pearce v. Texas, 155 U. S. 311, 15 S. Ct. 116, 39 L. ed. 164. The former clearly confirms the rule that in rendition proceedings objections to the sufficiency of the charge must 'reach deeper into the indictment than those which would be good against it in the court where it is pending,' and quotes from In re Strauss, 197 U. S. 331, 25 S. Ct. 537, 49 L. ed. 774, where it is said: 'Doubtless the word "charged" was used in its broad signification to cover any proceeding which a State might see fit to adopt, by which a formal accusation was made against an alleged criminal.'

In the latter case the indictments involved were in substantial conformity with the statutes of the demanding state, but exhibited neither the time nor the place of the alleged offense—averments ordinarily thought essential. The courts of the asylum state declined to interfere with the execution of the rendition warrant, and their judgment was affirmed in the Supreme Court."

In *Pierce v. Creecy,* 210 U. S. 387, 28 S. Ct. 714, 52 L. ed. 1113, cited in *Collins v. Traeger,* supra, the Court said:

"The Constitution provides that 'a person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.' (Art. 4, Sec. 2, Par. 2.) No person may be lawfully removed from one state to another by virtue of this provision, unless: 1, He is charged in one state with treason, felony, or other crime; 2, he has fled from justice; 3, a demand is made for his delivery to the state wherein he is charged with

crime. If either of these conditions is absent, the Constitution affords no warrant for a restraint of the liberty of any person. *Here the only condition which it is insisted is absent is the charge of a crime.* The only evidence of a charge of crime is the indictment, and the contention to be examined is that the indictment is insufficient proof that a charge has been made.

"The counsel for the petitioner disclaim the purpose of attacking the indictment as a criminal pleading, appreciating correctly that the point here is not whether the indictment is good enough, over seasonable challenge, to bring the accused to the bar for trial. Counsel concede that they cannot successfully attack the indictment except by showing that it does not charge a crime. The distinction between these two kinds of attack, though narrow, is clear. But it will not do to disclaim the right to attack the indictment as a criminal pleading, and then proceed to deny that it constitutes a charge of crime for reasons that are apt only to destroy its validity as a criminal pleading. There must be objections which reach deeper into the indictment than these which would be good against it in the court where it is pending. We are unable to adopt the test suggested by counsel, that an objection, good if taken on arrest of judgment, would be sufficient to show that the indictment is not a charge of crime. Not to speak of the uncertainty of such a test, in view of the varying practice in the different states, there is nothing in principle or authority which supports it. Of course, such a test would be utterly inapplicable to cases of a charge of crime by affidavit, which was held to be within the Constitution. Re Strauss, 197 U. S. 324, 49 L. ed. 774, 25 Sup. Ct. Rep. 535. The only safe rule is to abandon entirely the standard to which the indictment must conform, judged as a criminal pleading, and consider only whether it shows satisfactorily that the fugitive has been in fact, however inartificially, charged with crime in the state from which he has fled." (52 L. ed. 1120-1.)

And in *Pearce v. State of Texas,* 155 U. S. 311, 313, 39 L. ed. 164, 167, 15 Sup. Ct. Rep. 116, the Court said:

> "The district judge certified that, on the hearing below, he had examined the laws of the State of Alabama, and found the indictments sufficient thereunder, or 'at least not void.'
>
> An opinion was filed in the court of appeals by Simkins, J., in which it was held that any indictment which, under the laws of the demanding state, sufficiently charges the crime, will sustain a requisition even though insufficient under the laws of the asylum state; that in this case there was no question as to the nature of the crimes charged, and that they were offenses against the laws of Alabama; that indictments dispensing with the allegations of time and venue in conformity with the code of Alabama had been sustained by judicial decision in that state (Noles v. State, 24 Ala. 693; Thompson v. State, 25 Ala. 41) and were not necessarily fatally defective in every state of the Union, whatever its statutes or forms of proceeding. The majority of the court did not concur in all the propositions stated in the opinion, but expressed their views as follows: 'We desire to modify certain propositions stated in the opinion of Judge Simkins. It is intimated, if not stated directly, that the relator would have the right to show by proper evidence that the indictment in substance was not sufficient under the laws of the demanding state. Our position upon this question is that if it reasonably appears upon the trial of the habeas corpus that the relator is charged by indictment in the demanding state, whether the indictment be sufficient or not under the laws of that state, the court trying the habeas corpus case will not discharge the relator because of substantial defects in the indictment under the laws of the demanding state. To require this would entail upon the court an investigation of the sufficiency of the indictment in the

demanding state, when the true rule is that if it appears to the court that he is charged by an indictment with an offense, all other prerequisites being complied with, the applicant should be extradited. We are not discussing the character of such proof; this must be made by a certified copy of the indictment, etc.'

It was not disputed that the indictments were in substantial conformity with the statute of Alabama in that behalf, and their sufficiency as a matter of technical pleading would not be inquired into on habeas corpus. Ex parte Reggel, 114 U. S. 642 (29:250).''

In *Drew v. Thaw,* 235 U. S. 432, 440, 59 L ed. 302, 308, the rule is expressed by the Court as follows:

"When, as here, the identity of the person, the fact that he is a fugitive from justice, the demand in due form, the indictment by a grand jury for what it and the governor of New York allege to be a crime in that state, and the reasonable possibility that it may be such, all appear, the constitutionally required surrender is not to be interfered with by the summary process of habeas corpus upon speculations as to what ought to be the result of a trial in the place where the Constitution provides for its taking place. We regard it as too clear for lengthy discussion that Thaw should be delivered up at once."

To the same effect see:

Roberts v. Reilly, 116 U. S. 80, 95; 29 L. ed. 544, 549; 6 Sup. Ct. Rep. 291;

Hyatt v. New York, 188 U. S. 691, 709; 47 L. ed. 657, 660; 23 Sup. Ct. Rep. 456;

Munsey v. Clough, 196 U. S. 364, 372; 49 L. ed. 515, 516; 25 Sup. Ct. Rep. 282.

Ignoring the salutary rule thus laid down in the foregoing decisions, petitioner presents what in effect

is a general demurrer to the indictment or motion to quash, and argues at length that no crime has been charged in the indictment because:

(a) The section of the Washington Bank Act under which petitioner is charged (Sec. 56) applies only to officers and agents of banks.

(b) The "paper" denounced by the Act includes only "paper" pertaining to bank's condition of affairs.

(c) Section 56 is unconstitutional, under State Constitution, and

(d) Section 56 is unconstitutional under the Federal Constitution.

The first two of these contentions are effectively answered by the cases cited supra, holding that where the indictment is framed in the language of the statute defining the crime, the crime is sufficiently charged, and where the grand jury and the governor of the state believe a crime has been committed under the laws of the state by the person charged and allege the commission of that crime in the indictment, the constitutionally required surrender is not to be interfered with by the summary process of habeas corpus upon speculations as to what ought to be the result of the proceedings in the demanding state.

The last two contentions are equally unmeritorious. The law is well settled that the Federal Courts will not consider the constitutionality of the law under which petitioner is indicted, as measured by the State Constitution.

In *Collins v. Traeger,* 27 Fed. (2d) 842, decided by this Court, the rule is stated as follows at page 846:

> "Under the doctrine of this latter case, we must also rule against appellant on his further contention that the Illinois statute, defining the offense with which he is charged, is unconstitutional. Its validity has been sustained by the Supreme Court of Illinois. People v. Bertsche, 265 Ill. 272, 106 N. E. 823, Ann. Cas. 1916A, 729; Morton v. People, supra; Maxwell v. People, supra. At most, the question is only debatable, and is therefore primarily for the court having jurisdiction of the charge. If there denied any constitutional right, appellant may, as was said in the Pearce-Texas Case, supra, seek his remedy in the United States Supreme Court. To recognize his right to have the question decided here would, as is said in the Pierce-Creecy Case, supra, 'impose upon courts, in the trial of writs of habeas corpus, the duty of a critical examination of the laws of states with whose jurisprudence and criminal procedure they can have only a general acquaintance. Such a duty would be an intolerable burden, certain to lead to errors in decision, irritable to the just pride of the states, and fruitful of miscarriages of justice.' See, also, Drew v. Thaw, 235 U. S. 432, 35 S. Ct. 137, 59 L. ed. 302; In re Strauss, 197 U. S. 324, 332, 333, 25 S. Ct. 535, 49 L. ed. 774."

In *Carfer v. Caldwell,* 200 U. S. 293, 296, 50 L. ed. 488, 489, the Court said:

> "The jurisdiction of courts of the United States to issue writs of habeas corpus is limited to cases of persons alleged to be restrained of their liberty in violation of the Constitution or of some law or treaty of the United States, and cases arising under the law of nations. Re Burrus, 136 U. S. 586, 591, 34 L. ed. 500, 502, 10 Sup. Ct. Rep. 850; Andrews v. Swartz, 156 U. S. 272, 275, 39 L. ed. 422, 423, 15 Sup. Ct. Rep. 389;

Storti v. Massachusetts, 183 U. S. 138, 142, 46 L. ed. 120, 124, 22 Sup. Ct. Rep. 72."

And in *Andrews v. Swartz,* 156 U. S. 272, 275, 39 L. ed. 422, 423, the Court said:

> "The repugnancy of a statute to the constitution of the state by whose legislature it was enacted cannot authorize a writ of habeas corpus from a court of the United States unless the petitioner is in custody by virtue of such statute, and unless also the statute is in conflict with the Constitution of the United States."

To the same effect see:

Pearce v. Texas, 155 U. S. 311, 39 L. ed. 164, 167;

Ex Parte Januszewski, 196 Fed. 123;

Ex Parte Brown, 140 Fed. 461.

Nor will the Federal Courts pass upon the constitutionality of the state law under the Federal Constitution in advance of the Courts of the demanding state.

Collins v. Traeger, 27 Fed. (2d) 842 at 846.

In *Riggins v. United States,* 199 U. S. 547, 549; 50 L. ed. 303, 304, the rule is stated as follows:

> "It is settled that the writ of habeas corpus will not issue unless the court under whose warrant petitioner is held is without jurisdiction, and that it cannot be used merely to correct errors. Ordinarily the writ will not be granted when there is a remedy by writ of error or appeal, yet, in rare and exceptional cases, it may be issued, although such remedy exists.
>
> In New York v. Eno, 155 U. S. 89, 39 L. ed. 80, 15 Sup. Ct. Rep. 30, it was held that Congress intended to invest the courts of the union and the justices and judges thereof with power, upon

writ of habeas corpus, to restore to liberty any person within their respective jurisdictions held in custody, by whatever authority, in violation of the Constitution or any law or treaty of the United States; that the statute contemplated that cases might arise when the power thus conferred should be exercised during the progress of proceedings instituted in a state court against the petitioner on account of the very matter presented for determination by the writ of habeas corpus; but that the statute did not imperatively require the circuit court by that writ to wrest the petitioner from the custody of the state officers in advance of his trial in the state court; and that while the circuit court had the power to do so, and could discharge the accused in advance of his trial, if restrained in violation of the Constitution, it was not bound in every case to exercise such power immediately upon application being made for the writ. The conclusion was that in a proper exercise of discretion, the circuit court should not discharge the petitioner until the state court had finally acted upon the case, when it could be determined whether the accused, if convicted, should be put to his writ of error or the question determined on habeas corpus whether he was restrained of his liberty in violation of the Constitution of the United States."

To the same effect see:

Pearce v. Texas, 155 U. S. 311, 313-314, 39 L. ed. 164, 167;

Andrews v. Swartz, 156 U. S. 272, 275, 39 L. ed. 422, 423;

State v. Clough, 71 N. H. 594, 53 Atl. 1086, affirmed, 196 U. S. 364, 49 L. ed. 515;

Johnson v. Hoy, 227 U. S. 245, 247, 57 L. ed. 497, 499;

Minnesota v. Brundage, 180 U. S. 499, 501, 45 L. ed. 639, 640;

Tinsley v. Anderson, 171 U. S. 101, 104; 43 L. ed. 91, 96;

Ex Parte Royall, 117 U. S. 241, 251, 29 L. ed. 868, 871;

Ex Parte Fonda, 117 U. S. 516, 29 L. ed. 994;

Re Frederich, 149 U. S. 70, 75, 37 L. ed. 653, 656;

Whitten v. Tomlinson, 160 U. S. 231, 240, 40 L. ed. 406, 411;

Baker v. Grice, 169 U. S. 284, 42 L. ed. 748;

Salinger v. United States, 295 Fed. 498, 499.

It is respectfully submitted that under the foregoing authorities the indictment against petitioner is sufficient to charge him with the commission of a felony in the State of Washington and that the judgment of the District Court should be affirmed.

II. APPELLANT'S PETITION IS FATALLY DEFECTIVE.

Rule 50 of the Rules of Practice of the United States District Court, Northern District, provides:

> "The petition shall set forth the facts upon which it is claimed that the writ should be issued. Mere conclusions of law set forth in the petition will be disregarded by the Court."

Appellant's petition sets forth no facts upon which he relies for an issuance of the writ, but merely conclusions of law. As was said in *Whitten v. Tomlinson,* 160 U. S. 231, 242, 40 L. ed. 406, 412:

> "The general allegations in the petition, that the petitioner is detained in violation of the Constitution and laws of the United States, and of the Constitution and laws of the state of Connecticut, and is held without due process of law, are averments of mere conclusions of law, and not of matters of fact. Re Cuddy, 131 U. S. 280, 286 (33: 154, 157)."

It is submitted that appellant's petition sets forth no facts upon which appellant is entitled to an issuance of the writ and that this appeal should be dismissed.

III. APPELLANT'S CONTENTIONS WHEN CONSIDERED ON THEIR MERITS ARE UNSOUND.

Considering appellant's contentions upon their merits places appellant in no stronger position.

Appellant first erroneously argues that Section 56 of the Washington Banking Act applies only to officers or agents of banks, that the indictment nowhere alleges appellant is a member of that class, and that therefore the indictment charges no crime, and on pages 12 to 23 of his brief quotes extensively from numerous cases holding that where an act is made criminal only if committed by a member of a class, an indictment charging the crime must allege that the accused is a member of that class.

The fallacy of appellant's argument lies in the false hypothesis that Section 56 is limited to officers or agents of the bank. The material part of that section reads:

> "*Every person* who shall * * * knowingly subscribe to or exhibit *any* false or fictitious pa-

> per or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank or trust company * * * shall be guilty of a felony." (Italics ours.)

Section 14 of the Act, Sec. 3221 Rem. Comp. Stat., defines "person" as used in the act, as follows:

> "The term *'person'* where used in this act, unless a different meaning appears from the context, includes a person, firm, association, partnership, and corporation, and the plural thereof, whether resident, non-resident, citizen or not." (Italics ours.)

In enacting the foregoing provision, the legislature removed all doubt as to who were included within the term "person," and appellant clearly falls within the definition.

That the legislature meant just what it said when it included "every person" in Section 56 is evidenced by the reading of other sections of the act. In the very next section, Sec. 57, Rem. Comp. Stat., Sec. 3264, the act provides:

> "Every *officer*, *director* or *employee* or *agent of any bank or trust company* who, for the purpose of concealing any fact or suppressing any evidence against himself, or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any bank or trust company, or of the state bank examiner, or of anyone connected with his office, shall be guilty of a felony." (Italics ours.)

Likewise, throughout the entire act it will be found that where the legislature desired to limit the provisions of the act to any class or group it was done in careful and well chosen language. (See Rem. Comp.

Stat., Secs. 3213, 3216, 3218, 3225, 3248, 3251, 3256, 3259, 3260, 3261, 3262, 3264, 3286a, Rem. 1927 Supp. 3288, 3290 and 3292.)

The crime under Sec. 56 is in making and presenting a false statement for the purpose of deceiving a bank examiner. Experience in the banking world has shown that sometimes when a loan becomes delinquent and the banker does not want the loan taken out of the allowable assets of the bank by the bank examiner, he gets the borrower to make a false statement of assets and liabilities so as to lead the bank examiner to believe that the delinquent loan is adequately secured. Very frequently, and in fact, in most cases, such a statement is made after the loan has been held in the bank for several years, so it cannot be said that any money had been obtained from the bank by reason of such false statement. It often happens, as a matter of fact, that the loan is originally made on a correct statement of assets and liabilities but that the borrower thereafter finds himself in failing circumstances and makes false statements to continue the loan. The plain intent of the law is to make it a felony for each and every person making false statements with intent to deceive those authorized to examine banks and trust companies and so that a bank examiner may, with more safety, rely upon the statements of borrowers in making an examination of a bank.

Hence it is clear that Section 56 is as necessary to the regulation and management of the banking and trust business as any other provision of the act and is as relevant thereto.

Section 56 not being limited to any particular class or group of persons, the cases cited by appellant to the effect that where a statute limits its application to a particular class it must be alleged that the one charged is within the class, have no application.

Appellant next argues that charging appellant in the words of the statute is insufficient. In support of his contention, appellant cites cases holding that where the statute under which the accused is charged does not contain all the elements necessary to constitute the crime, charging in the language of the statute is insufficient. The rule thus cited is sound law applied to the proper facts but has no application in the case at bar. Section 56 contains all the elements necessary to the commission of the crime charged. Furthermore, the indictment minutely describes the overt acts alleged to have been committed by appellant and meets the requirements of the Washington law, Rem. Comp. Stat., Sec. 2055, 2057, 2064 and 2065, which latter section reads as follows:

> "The indictment or information is sufficient if it can be understood therefrom * * *
>
> "6. That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. * * *"

Section 2066, Rem. Comp. Stat., is a curative statute wherein it is provided that certain technical errors or omissions should not defeat informations or indictments.

Appellant states at page 26 of his brief:

> "In the case at bar, Section 56 of the State Banking Act does not set forth all the elements necessary to constitute the offense intended to be punished. It does not set forth directly and expressly that the offender, to be punishable, must be an officer, agent or employee of a bank, viz.: within the 'class'. Further, it does not set forth that the 'false paper' denounced by Section 56 must be false as to the financial condition, or as to matters affecting the financial condition of a bank."

The fallacy of appellant's argument is here vividly expressed by appellant himself.

Having erroneously written into Section 56 the fanciful theory that it applies only to banking officers or agents and to false papers pertaining to the bank's financial conditions, he then declares that the section does not include all the necessary elements of the crime charged because it omits the limitations which appellant has erroneously construed into the section and then declares that the indictment is, therefore, insufficient. Had Section 56 the limited application urged for it by appellant, this argument would be more convincing. However, as we have heretofore shown, that section has no such narrow or restricted meaning, and appellant's position that the section should have contained additional elements restricting its application should be addressed to the legislature of Washington and not to a Court.

What has been said with reference to appellant's argument that Section 56 is limited to officers and agents of the bank likewise answers his contention that the "false paper" exhibited must pertain solely

and exclusively to the financial condition of the bank. Appellant offers no support by authority or reason to support this assertion, but argues at length on pages 30 and 31 of his brief, as follows:

> "The legislature did not intend that I should go to prison for ten years in the event I should 'subscribe or exhibit a false paper (a false statement as to my golf score, or as to my proficiency as a golfer) with intent to deceive Mr. Black, who happens to be a bank examiner.' Nor did the legislature intend to make a felon out of a person who by letter or other writing addressed to Mr. Black, falsely represented his own personal financial worth."

Appellant then states that we must look to the entire act to see what the legislature intended to prohibit by Section 56. We readily concede that the legislature, in enacting Section 56, did not intend to cover subjects unrelated to banking, as presented in the supposititious case presented by appellant and that its intention is clear when read in the light of the other section of the Washington Bank Act regulating the business of banks and trust companies. What the legislature intended was to prevent persons from subscribing to and exhibiting a false or fictitious paper or security, instrument or paper relating to banks or trust company business, with intent to deceive any person authorized to examine into the affairs of any bank or trust company. Such statement would necessarily have to refer to matters into which bank examiners are authorized to inquire by the provisions of the act. As heretofore pointed out, the purpose of this provision is obvious. One of the purposes for which bank examiners are appointed to examine banks is to make certain that the security behind the

loans of banks and trust companies have not become impaired, and that the borrowers are solvent. It therefore becomes imperative that the statements furnished the bank or trust company regarding the assets of those borrowing funds from the bank reflect the true financial condition of the borrower, for should they not so do, the bank examiner would never be in a position to determine whether the loans of the bank were adequately secured without making a complete investigation and audit of the books of all persons and corporations borrowing money from the bank or trust company under examination. It was, therefore, the obvious intent and purpose of the legislature, in enacting Section 56, to make it a felony for *any person* to subscribe to or exhibit a false or fictitious paper with the intent to deceive any bank examiner authorized to examine into the affairs of banks or trust companies. The words "any bank examiner" as used here refers to those authorized to and examining banks and trust companies of the State of Washington for banking and trust company business and affairs within the context of the act, and not to the wholly unrelated subjects as assumed by appellant.

On pages 31 and 32 of appellant's brief, appellant states:

> "Inasmuch as the examiner is charged with the duty of examining and determining the financial condition of a bank, it is reasonable to assume that the legislature intended to assist him in obtaining truthful and correct information from the bank's books, papers and employees as to the financial condition, or pertaining to the financial condition, of the bank."

This statement by appellant we conceive to be an accurate statement of one of the prime purposes of the Banking Act. In order to enable a bank examiner to obtain truthful and correct information from the bank's books, papers and employees, he must have accurate information concerning the security behind the loans of the bank. Section 56, therefore, was enacted to provide that protection.

The opinion of the District Court of Appeal for the Third Appellate District, rendered November 19, 1929, in the matter of this appellant's application, substantially disposes of all contentions made by appellant herein. For the convenience of the Court we annex to this brief, as Exhibit "A", a copy of that opinion. The opinion is reported in 60 Cal. Dec. page 798.

It is respectfully submitted that the appeal herein is without merit and that the decision of the Court below should be affirmed.

Dated, San Francisco,
March 22, 1930.

MILTON T. FARMER,
PHILIP H. ANGELL,
ATHEARN, CHANDLER & FARMER
AND FRANK R. DEVLIN,
Attorneys for Appellees.

(Appendix Follows.)

Appendix.

Appendix

EXHIBIT "A"

(Vol. 60 Cal. App. Dec. 798.)

In the District Court of Appeal
State of California
Third Appellate District

No. 1102

In the Matter of the Application of
H. P. Brown
for Writ of Habeas Corpus.

OPINION

The petitioner has applied for a writ of habeas corpus on the ground that he is illegally restrained of his liberty under an executive warrant issued by the governor of this state, after a hearing, upon the demand of the governor of the state of Washington for the extradition of the petitioner, who was indicted by the grand jury of the county of Grays Harbor, Washington, on five counts, in each of which it is charged in substance:

That the petitioner did "wilfully, knowingly, maliciously, fraudulently, feloniously and unlawfully make, subscribe, exhibit to and file with Hayes & Hayes, Inc., bankers, a banking corporation duly or-

ganized and existing pursuant to the laws of the state of Washington as a state bank," a false financial statement of assets and liabilities, "with the intent to deceive the examiner or examiners or other person or persons who were authorized by law to examine into the affairs of said banking corporation."

The alleged false financial statement referred to in the first count purported to set forth the assets and liabilities of the petitioner and those in the other counts the assets and liabilities respectively of four different corporations. Section 91 of the Washington Bank Act reads as follows:

"Every person who shall knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank or trust company or shall knowingly subscribe to or exhibit any false or fictitious paper or security, instrument or paper, with the intent to deceive any person authorized to examine into the affairs of any bank or trust company or shall make, state or publish any false statement of the amount of the assets or liabilities of any bank or trust company shall be guilty of a felony." (Laws 1917, p. 299.)

Petitioner contends that the indictment fails to state a public offense, that the section quoted applies only to "the officers, agents, employees and banking personnel of banks," and that the indictment does not allege that the petitioner is an officer, agent or employee.

"On habeas corpus the inquiry into the sufficiency of an indictment is limited. We think the true rule is that where an indictment purports or attempts to state an offense of a kind of which the Court assuming to proceed has jurisdiction the question whether the facts charged are sufficient to constitute an offense of that kind will not be examined into on habeas corpus." (*Matter of Ruef*, 150 Cal. 665, 666; *Ex parte Cordish*, [Cal. App.] 271 Pac. 784.)

"By the laws of Pennsylvania, every indictment is to be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the Act of Assembly prohibiting its commission and prescribing the punishment therefor. * * * That Commonwealth has the right to establish the forms of pleadings and process to be observed in her own courts, * * * subject only to those provisions of the Constitution of the United States involving the protection of life, liberty and property in all the states of the Union." (*Ex parte Reggel*, 114 U. S. 642, 5 S. Ct. 1148, 29 L. Ed. 250.)

"In extradition proceedings, * * * the purpose of the writ (of habeas corpus) is not to substitute the judgment of another tribunal upon the facts or the law of the matter to be tried. * * * And even if it be true that the argument stated offers a nice question, it is a question as to the law of New York which the New York courts must decide. * * * When, as here, * * * the indictment by a grand jury for what it and the governor of New York allege to be a crime in that state, and the reasonable possibility that

it may be such, all appear, the constitutionally required surrender is not to be interfered with by the summary process of habeas corpus upon speculations as to what ought to be the result of a trial in the place where the Constitution provides for its taking place." (*Drew v. Thaw,* 235 U. S. 432, 35 S. Ct. 137, 59 L. Ed. 302; *Biddinger v. Commissioner of Police,* 245 U. S. 128, 38 S. Ct. 41, 62 L. Ed. 193.)

Testing the indictment by the foregoing rules, it cannot be held, in this proceeding, that it does not substantially charge a public offense. The act of the cashier of a bank in keeping on file a false statement of the kind alleged in the indictment, with the intent to deceive a bank examiner, would doubtless constitute a violation of Section 91 of the Washington Bank Act. If a customer of the bank, knowing the purpose of the cashier, should make and file with the bank such a false financial statement, even though he might be termed an accessory before the fact, would be liable to indictment, trial and punishment as a principal. (Remington's Compiled Statutes of Washington, Sec. 2007.) It cannot be said that there is not a "reasonable possibility" that the indictment may be held sufficient to warrant a conviction upon proof of facts of the kind stated.

Whether the making and filing of a false financial statement with the officers of a bank, with intent to deceive a bank examiner, where such officers in good faith believe the statement to be true, is a violation of Section 91, appears never to have been decided by the Washington courts. There is at least a "reasonable

possibility" that such acts by a customer of a bank, for the purpose of establishing or maintaining his credit, may be held to be a violation of that section. It is true that the indictment does not allege that the petitioner was a customer of the bank at the time of the alleged acts or that he made and filed the alleged false statement for the purpose of establishing or maintaining his credit, but this defect, if it is a defect, is one of uncertainty only, which cannot be considered in this proceeding. The courts of Washington, in common with those of many other states, have held that it is sufficient generally to charge an offense defined in a statute in the language of the statute. The charge in the indictment follows the language of the statute and, for the purposes of this summary proceeding, it is deemed sufficient.

The writ is discharged and the petitioner is remanded to the custody of respondent, W. A. Hamm, sheriff of Grays Harbor County, Washington.

FINCH, P. J.

I concur:

THOMPSON, J.

Filed November 19, 1929,
John T. Stafford, Clerk.